

Appl. No. 08/704,159  
Reply to Office action of August 25, 2004

### Remarks

#### Introduction

The above-identified application has been carefully reviewed in light of the Office Action mailed August 25, 2004, which included a final rejection of the pending claims. This Amendment is being submitted within TWO MONTHS of the mailing date of the Final Office Action. Applicant submits that the amendments and remarks included herein show the present claims to be allowable and do not raise new issues. Therefore, applicant respectfully requests that this amendment be entered.

Claims 113-118, 120, 121 and 124 were pending. By way of this response, claim 113 has been amended, claim 135 has been added, and claim 118 has been cancelled without prejudice. Support for the amendments to the claims can be found in the application as originally filed, and no new matter has been added. Accordingly, claims 113-117, 120, 121, 124, and 135 are currently pending.

As a preliminary matter, applicant gratefully acknowledges and thanks the Examiner for the courtesy shown to Dr. Greg S. Hollrigel of the undersigned's office for the time on September 14, 2004 to discuss the Office Action and the rejection of the claims.

Based on that discussion, applicant understands that it was confirmed that claim 118 was deemed to be enabled. Applicant also understands that the Examiner agreed that an amendment of claim 113 to include the subject matter of claim 118 would be sufficient to overcome the rejection of claim 113.

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Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 113-114, 116, and 119 remain rejected under 35 U.S.C. § 112, first paragraph.

Applicant respectfully traverses the rejection. However, to advance the prosecution of the above-identified application, claim 113 has been amended as set forth above. Claim 113 has been amended to include the subject matter of claim 118. Claim 135 has been added to include the subject matter of previous claim 122. As acknowledged in the Office Action, and as discussed above, since claim 118 was not rejected under 35 U.S.C. § 112, first paragraph, and based on the Examiner's verbal indication that an inducible promoter is enabled by the specification of the above-identified application, the Examiner has acknowledged that claim 118 is enabled by the above-identified patent application. Thus, because claim 118 is enabled by the above-identified patent application, applicant submits that amended claim 113 is enabled by the above-identified patent application.

In view of the above, applicant submits that the rejection of the claims, and claims 113-114 in particular, under 35 U.S.C. § 112, first paragraph have been overcome, and respectfully requests that this rejection be withdrawn.

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Conclusion

In conclusion, applicant has shown that the present claims satisfy the requirements of 35 U.S.C. § 112. Therefore, applicant submits that the present claims, that is claims 113-117, 120, 121, 124, and 135, are allowable. Therefore, applicant respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: September 22, 2004

Respectfully submitted,



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